

when writing to McCain were correct or not might be deemed by a jury to be of marginal importance; and such a jury might well resist finding such testimony material.

c. There is Insufficient Evidence to Prove that Babbitt Possessed the Requisite Intent to Provide False Testimony with Respect to the McCain Letter

The law of perjury requires that the material false statement provided under oath be made with the willful intent to provide false testimony. The evidence is insufficient to prove beyond a reasonable doubt that Babbitt knowingly and intentionally provided false testimony to the Senate Committee when he denied that he intended to mislead Sen. McCain in his Aug. 30, 1996 letter.

Proof of Babbitt's intent to provide false testimony on this issue must be established, in part, by the same factors considered in evaluating whether his testimony was false on this issue – *i.e.*, the text of the letter itself, the circumstances of the drafting of the letter and his subsequent conduct and statements. Babbitt insisted in his testimony that his letter could and should be read as making literally true statements in response to what both Babbitt and senior Departmental staff said they perceived to be the central questions implicit in Senator McCain's letter to Babbitt: whether Babbitt and Ickes had communicated about the Hudson matter, and whether the Hudson decision had been corrupted. Babbitt insists he simply did not pay sufficient attention to the literal demands of McCain's letter concerning Eckstein. Such a position requires a strained interpretation of the two letters – particularly in the context of all the facts – but must be considered in assessing reasonable doubt as to Babbitt's intention both when he signed the letter to McCain and when he gave testimony before the Senate Committee concerning the letter.